

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commissions' Rules to)	CC Docket No. 94-102
Ensure Compatibility with Enhanced 911)	
Emergency Calling Systems)	
)	
Phase II Compliance Deadlines for)	
Non-Nationwide CMRS Carriers)	

To: Wireless Telecommunications Bureau

**REQUEST FOR ADDITIONAL LIMITED WAIVER
AND EXTENSION OF THE HANDSET PENETRATION DEADLINE
OF THE COMMISSION'S PHASE II E911 RULES**

East Kentucky Network, LLC d/b/a Appalachian Wireless ("Appalachian Wireless"), by its attorneys and pursuant to 47 C.F.R. §1.925, hereby respectfully requests an additional limited waiver and extension of time to comply with Section 20.18(g)(1)(v) of the Commission's rules regarding Phase II of Enhanced 911 ("E911") services, 47 C.F.R. §20.18(g)(1)(v), which requires Tier III carriers who employ a handset-based Phase II solution to achieve a location-capable handset penetration rate among subscribers of at least 95%.¹

As set forth below, circumstances exist wherein Appalachian Wireless has not been able to meet its existing deadline of June 30, 2006, for achieving the 95% subscriber penetration requirement, despite its best efforts at promoting subscriber handsets with automatic location identification ('ALI') features. For reasons stated herein, Appalachian Wireless respectfully requests an additional six months, until December 31, 2006, to meet the 95% penetration requirement.

¹ Revision of Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, CC Docket 94-102, Order To Stay (released July 26, 2002).

I. Background

Appalachian Wireless is a Tier III cellular carrier that operates in rural markets in Kentucky Rural Service Areas 9 and 10. Appalachian Wireless was conditionally granted an extension through June 30, 2006, to comply with Section 20.18(g)(1)(v) of FCC rules, 47 C.F.R. § 20.18(g)(1)(v), in *Order*, CC Docket No. 94-102, FCC 06-02, released January 13, 2006. New data reveals that Appalachian Wireless has achieved a location-capable handset penetration rate among subscribers of about 91.3%, but has not met its projections of achieving a location-capable handset penetration rate among subscribers of 95% by June 30, 2006.

Appalachian Wireless operates a Code Division Multiple Access ("CDMA") digital network throughout its service area. All new construction is based on the CDMA air interface. Nevertheless, many subscribers remain dependent upon the legacy TDMA/analog network technology network. In support of the need for additional time to meet its 95% penetration deadline, the following is submitted.

II. Appalachian Wireless Has Demonstrated Good Faith in Complying with the E911 Requirements

Appalachian Wireless has a history of compliance with the FCC's wireless E911 requirements. Although 100% of all new digital handsets activated on Appalachian Wireless's system are location capable, Appalachian Wireless is experiencing a slowdown of customer acceptance of location capable handsets. Appalachian Wireless has diligently encouraged subscribers to adopt personal equipment upgrades. Promotional campaigns have marketed new handsets and promoted the benefits of early renewal for TDMA and analog customers who trade in the old handsets. The campaigns have offered free phones on a buy-one-get-one-free basis, on a buy-two-

get-a-third-free basis, and in association with the purchase of specified numbers of minutes. Promotions for phones with cameras, ringtones, color screens and other features have been utilized.

Generic promotions are conducted to entice existing customers into visiting one of Appalachian Wireless's retail stores where representatives proactively sell the benefits of location-capable phones and request migration to the new CDMA system. Appalachian Wireless's promotional campaigns have been conducted in print ads, by direct mail, by billing inserts, by signage and on the website and on television and radio.

III. Appalachian Is Sending E911 Phase II Data to PSAPs

A total of thirteen Public Safety Answering Points ("PSAPs") are located within Appalachian Wireless's service area. All are have or are becoming capable of receiving and utilizing Phase II data. Appalachian Wireless is transmitting E911 data to seven capable PSAPs. Appalachian Wireless is working with the other five PSAPs, on their schedule, to deploy Phase II services. Appalachian Wireless maintains a dialogue with the PSAPs in its service area and with the Statewide Wireless E911 Coordinator. Safety officials are aware of the ongoing subscriber conversion to location-capable handsets and have expressed no objection or concern with Appalachian Wireless's 95% penetration schedule.

IV. The Public Interest Would Be Served by Waiver of the Penetration Deadline

In light of the slower than anticipated pace of conversion of subscribers in purchasing new location-capable handsets, Appalachian Wireless requests a further limited extension of the penetration deadline until December 31, 2006.

Grant of an additional limited waiver and extension of time for Appalachian Wireless to comply with 47 C.F.R. §20.18(g)(1)(v) would serve the public interest. An extension through

December 31, 2006, of the penetration deadline is warranted given the unique facts and circumstances of Appalachian Wireless's position. As set forth in Section 106(a) of the Act, the Commission is to grant a waiver to Tier III carriers "if strict enforcement of the 95% subscriber penetration requirements would result in consumers having decreased access to emergency services."² Indeed, Appalachian Wireless's analog and TDMA subscribers would be denied access to Phase II E911 services if Appalachian Wireless is required to deactivate existing analog/TDMA service in order to comply with FCC rules.

If not granted a further waiver, Appalachian Wireless will be in the position of having to cease or mitigate analog and/or TDMA operations in order to achieve the 95% penetration figure and avoid FCC enforcement action. Cellular coverage will be denied to persons who depend upon outdated communications services in mountainous areas, and who rely upon their legacy TDMA and analog phones for safety and for elementary contact with other persons. Many of those persons are located in the most isolated and rugged service areas, and on remote farmland included within Appalachian Wireless's rural service area. Without their TDMA and 3-watt analog phones, the customers would be unable to place calls, including calls to 911 for basic and Phase I emergency services.

These alternative to waiver would invariably result in consumers having "decreased access to emergency services." Because enforcement of the existing 95% deadline could result in forcing Appalachian Wireless to minimize or deactivate its TDMA and/or analog networks and deprive

² In December 2004, Congress enacted the Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004 (*Enhance 911 Act*). The *Enhance 911 Act* directed the Commission to grant qualified Tier III carriers' requests for relief of the December 31, 2005 ninety-five percent penetration deadline for location-capable handsets, as set forth in Section 20.18(g)(1)(v) of the Commission's Rules, if "strict enforcement of the requirements of that section would result in consumers having decreased access to emergency services."

subscribers of basic 911 services, Appalachian Wireless requests review under the *Enhance 911 Act* waiver standard.

In general, furthermore, a waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.³ The Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.⁴ The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.⁵ The Commission has stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.⁶ As set forth below, Appalachian Wireless meets the Commission's standards in that the circumstances underlying the request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

V. Appalachian Wireless Has a Plan to Achieve Compliance with the 95% Penetration Benchmark

As stated, 100% of digital handsets that are newly activated on Appalachian Wireless's

⁴ 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D. C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D. C. Cir. 1969)).

⁵ *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

⁶ *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

⁷ *Id*

system are ALI-capable. From the beginning of the deployment of CDMA handsets in April 2004 through March 2005, the penetration rate of location-capable handsets on Appalachian Wireless's system increased by 4.65% per month. From April 2005 through September 2005 the increase slowed to 3.7% per month. From October through December 2005 the increase slowed to 2% per month. During the months of 2006 the increase has slowed to about 1% per month, and total penetration stands at about 91.3% at this time. While the progress represents considerable good faith by Appalachian Wireless to convince subscribers to exchange old handsets for new, ALI-capable handsets, Appalachian Wireless has been met with an unpredictable slowdown in the last stages of adoption. Many subscribers adamantly insist upon keeping their TDMA and analog phones because the phones are more dependable, operate in a larger range, and are already programmed with favorite phone numbers and customized features.

Appalachian Wireless has seen a summer slowdown in new handset sales, and yet expects that 95% of its subscribers will have ALI-capable handsets by December 31, 2006. Progress is being made, but at current conversion rates, 95% penetration could not be achieved before June 30, 2006.

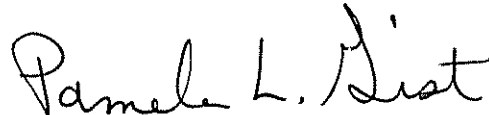
In service to its customers, Appalachian Wireless will continue to offer TDMA and analog services, but it will maintain its policy of selling and activating only ALI-capable digital handsets. The carrier will continue to conduct marketing campaigns to encourage consumer adoption of new handsets and to provide Phase II E911 services to the local PSAPs. However, given the rural character of Appalachian Wireless's market and the reliance by local subscribers upon TDMA and analog phones and service, it is necessary for Appalachian Wireless to respectfully request a further limited waiver and extension of the 95% penetration requirement.

Conclusion

Based on the foregoing reasons, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest. Accordingly, Appalachian Wireless requests a temporary waiver and extension of time, through December 31, 2006, to achieve a location-capable handset penetration rate among subscribers of at least 95%. The public interest benefit in this case equals or exceeds that which the Commission has found in other instances to be sufficient for waiver, and the request meets the standards of the *Enhance 911 Act*. Therefore Appalachian Wireless requests that a limited waiver and extension of Section 20.18(g)(1)(v) of FCC Rules be granted as proposed.

Respectfully submitted,

East Kentucky Network, LLC
d/b/a Appalachian Wireless

A handwritten signature in black ink, reading "Pamela L. Gist", is written over a horizontal line.

David L. Nace
Pamela L. Gist

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July 27, 2006

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IMPORTANT SUBSCRIBER SAFETY INFORMATION

Appalachian Wireless has your safety in mind, particularly when you place a call for 911 emergency services u mobile phone. Appalachian Wireless is working with Public Safety Answering Points ("PSAPs") to enable rescu personnel to find you even if you cannot convey your location when you call. Appalachian Wireless and your lo are actively upgrading systems so that the PSAPs are capable of receiving critical location data that Appalachi will deliver to them. The work should be finished in March 2006. One exception is that emergency location serv become available in Dickenson County, Virginia, in about June 2006.

ONLY PHONES UTILIZING APPALACHIAN WIRELESS' CDMA NETWORK WILL BE CAPABLE OF TRANSM LOCATION DATA TO PSAPs. These include all phones purchased from Appalachian Wireless since April 15, . TDMA AND ANALOG PHONES DO NOT HAVE LOCATION CAPABILITY

If you upgrade your TDMA or analog handset, your location information will be automatically transmitted to emt officials when you dial 911. Please take advantage of Appalachian Wireless' special offers on upgraded handse and your family will be glad you did

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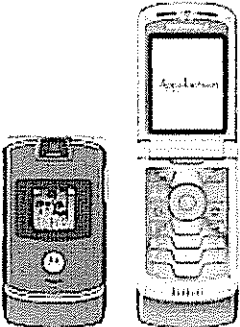
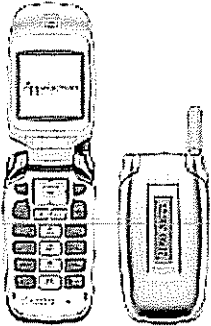
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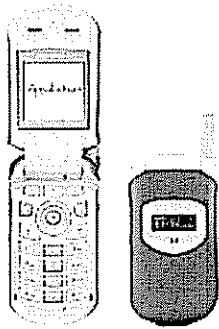
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	Buy For Pre-paid	Buy 1, Get up to 4 FREE		
	Motorola RAZR <i>Purchase This Phone Now</i> -- More Info	\$229.99	\$279.99 \$349.99	
	Buy For Pre-paid	You asked for it, and we got it! The coolest phone around!		
	Kyocera KX9C <i>Purchase This Phone Now</i> -- More Info	\$29.99	\$129.99 \$199.99	
	Buy For Pre-paid			
Motorola V262 <i>Purchase</i>				



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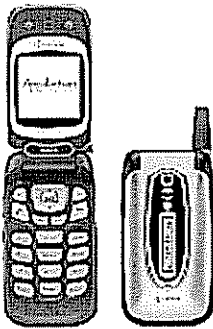
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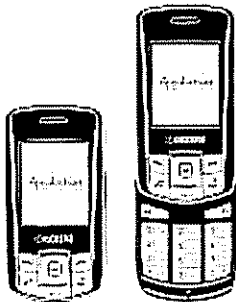
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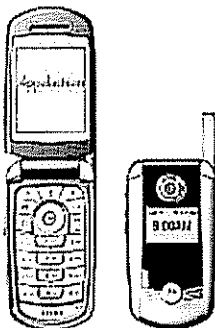
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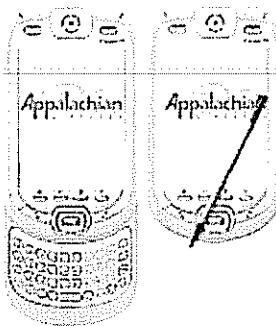
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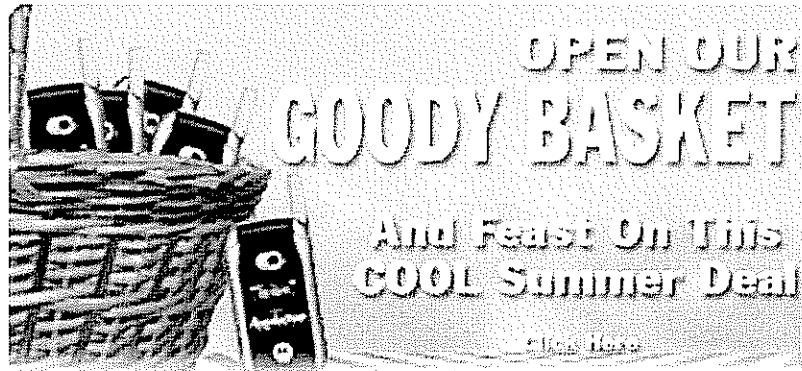
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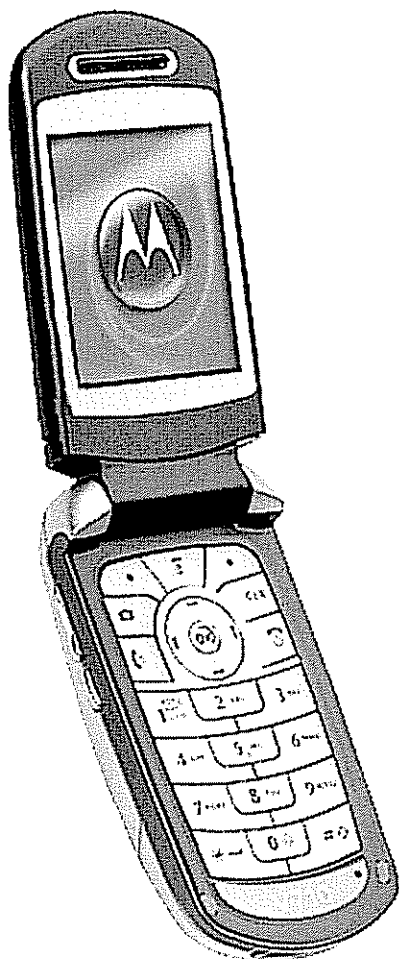


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Motorola V710**Weight:** 4.06 oz (with battery)**Size:** 3.70 x 1.93 x 0.92**Talk Time:** 3.33 Hours (Digital)**Stand By:** 150 Hours (Digital)**Technology:** Tri-mode (CDMA, PCS, & Analog)**Frequency:** 800 MHz CDMA, 1900 MHz PCS, & 800 MHz Analog**Price:** \$199.99 ** (with 24 month agreement)

\$249.99 ** (with 12 month agreement)

Features: External LCD: Color (98 x 67 pixels)
Internal LCD: 262,144 Colors (176 x 220 pixels)
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Bluetooth (Supports Handsfree, Headset, & Dial-up Network Profiles)
BREW®
Calculator
Calendar
Camera (1+ megapixel Resolution & LED flash)
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Custom Ringtones (MP3 & MIDI formats)
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EMS/Picture Messaging
Expansion Card (TransFlash/MicroSD Slot)
Games (Downloadable w/BREW)
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Headset Jack (2.5 mm)
High-Speed Data Technology (1xRTT)
MMS
MP3 Player
Memory (MB): 10 plus TransFlash removable memory
Multiple Languages (English & Spanish)
Multiple Numbers per Name
PC Sync with Mobile PhoneTools 2.0
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Polyphonic Ringtones
Predictive Text Entry Technology (iTAP)
Ringer ID

Side Keys (up/down)
Smart Keys (Left Side)
Voice & Camera Keys (Right Side)
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SyncML
Text Messaging 2-Way
Text Messaging Templates
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Voice Memo
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* * Phone prices determined by plan cost. Cost above is with \$37.00 plan or higher.

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DECLARATION

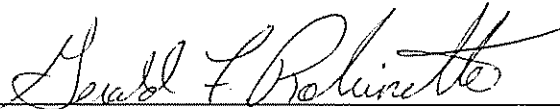
I, Gerald Robinette, hereby state and declare:

1. I am General Manager of East Kentucky Network, LLC d/b/a Appalachian Wireless, a wireless telecommunications services operator and the Petitioner herein.

2. I am familiar with the facts contained in the foregoing "Request For Additional Limited Waiver And Extension Of The Handset Penetration Deadline Of The Commission's Phase II E911 Rules" and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27th day of July 2006.



Gerald Robinette
General Manager